

Summary.

Regarding the Draft Permit on Page 1 (lines 18-22) and Page 29 (lines 8-19), Seattle's position is that the permit should continue to assign responsibility to King County as Co-permittee for *both* the Lander basin and the Densmore basin. King County co-applied with Seattle for coverage for these basins based on its agreement with Seattle and has not amended that application. The current agreement between the County and City specifically states that the County accepts responsibility for meeting all existing and future regulatory requirements for Lander and Densmore basins, identifying the NPDES municipal stormwater permit as being one of these requirements. More importantly, the underlying reasons for King County being a Co-permittee with the City has not changed.

Background.

In the current NPDES municipal stormwater permit (June 1995), King County is a co-permittee with the City of Seattle, responsible for conducting monitoring, inspection, and outreach programs in the Densmore and Lander Basins. The origins of this arrangement lie in the sewer separation projects conducted by the Municipality of Metropolitan Seattle (Metro) in the late 1980s and early 1990s. As part of these projects, which involved constructing new separated storm sewer systems and outfalls in these two basins, Metro agreed to accept responsibility for existing and future regulatory requirements for the newly created storm drain systems. Before the 1995 NPDES permit was issued, Metro had been consolidated into King County and the County assumed the former Metro's responsibilities as a co-permittee with the City. In April 1997, Ecology approved Seattle's Stormwater Management Program (SWMP), which included a section describing King County's requirements in the Densmore and Lander Basins. Throughout the current permit term, King County has continued to conduct activities in the Densmore and Lander Basins as a Co-permittee as specified in the SWMP. King County has continued to describe its actions in these two drainage basins each year in its annual NPDES report to Ecology.

King County's Proposal: Change Co-permittee Status for Densmore and Lander Basins

In February, 2001, King County wrote Ecology asking to be removed as a co-permittee with the City of Seattle for both Densmore and Lander Basins on the grounds that the County did not fit the permit definition of owner or operator of these municipal separate storm sewers. On the basis of this request, and in the absence of a formal response by the City of Seattle, Ecology wrote in a letter dated June 19, 2001, that permit coverage was not required for the Lander Basin, agreeing that the County neither owned nor operated the conveyance systems or the outfall. Ecology determined that coverage was still required for Densmore Basin. This was based on Ecology's understanding that the County owned the outfall and was, therefore, still responsible for its discharges. Accordingly, the Draft Permit (February 15, 2006) specifically assigns King County Co-permittee status for Densmore Basin, but no mention is made of Lander Basin.

Seattle's Position: King County Retains Permit Responsibilities for Densmore and Lander

Having made careful review of the set of ordinances, Council motions, and agreements that originally established King County as a Co-permittee with Seattle, we have come to the conclusion that the County retains responsibilities for both Densmore *and* Lander Basins and to properly fulfill its obligations under its agreements with the City, it should retain Co-permittee status for both these basins. The basis for this conclusion is provided below:

Lander Separation Project MOA between the City of Seattle and Metro (July 31, 1989).

In this MOA, Metro agrees to retain full responsibility for compliance with any existing or future regulatory requirements established to identify, characterize or control discharges of pollutants from storm drains constructed under the Lander Project, including activities necessary to acquire NPDES permits and comply with conditions of such permits.

King County Council Motion No. 9370, passed September 19, 1994.

Reiterates Metro's agreement in the Lander MOA regarding responsibility for complying with any existing and future regulations for these storm drains.

Affirms that King County is participating in the NPDES application process as a co-permittee with the City of Seattle.

Authorizes the County Executive to enter into a Memorandum of Agreement for Stormwater Management with the City of Seattle.

MOA for Stormwater Management Between City of Seattle and King County, dated September 25, 1995.

Acknowledges Metro's responsibility "for complying with existing and future regulatory requirements established to identify, characterize and control discharges of pollutants from new stormwater discharges resulting from its separation projects, including activities necessary to acquire and comply with NPDES permits."

Specifically identifies both the Lander Street storm drain and the drainage basin of the Densmore storm drain as basins where Metro has conducted separation projects and which, therefore, must follow the terms of the MOA.

Authorizes the City and Metro to enter into one or more joint programs deemed necessary to comply with the terms of a municipal stormwater NPDES permit.

States that "Metro owns the storm drain facilities downstream from the point where the Densmore Drain connects to the Metro system at the overflow structure in East Green Lake Drive North, including the University Regulator stormwater pump station and the outfall in Lake Union. Metro owns the Lander low flow connection, regulator station, and outfall station."

Seattle's position based on the above referenced documents is that at one point both King County and the City of Seattle had a clear understanding that the County would serve as a Co-permittee with Seattle and assume full responsibility for all applicable NPDES requirements in both the Densmore and Lander drainage basins. Further, our view is that the qualifications cited in King County's 2001 letter regarding owner/operator status, which are based on definitions contained in the NPDES municipal stormwater discharge permit, do not effectively change this earlier understanding. Additionally, in our read of the MOA between the City and County, the County acknowledges ownership of portions of the conveyance systems in each system and the outfall stations of both basins.

The Foundational Issue: Avoiding a Shift in Regulatory Obligations

Finally, and most importantly, all parties need to recognize that the foundational reason for the agreement between Metro and the City of Seattle has not changed. Metro's 1988 Combined Sewer Overflow Control Plan required that Metro achieve a 75-percent reduction in combined sewer overflows (CSOs) by 2006 in order to comply with state requirements. To meet this objective in the most cost-effective manner, Metro needed to remove stormwater from the combined systems in Densmore and Lander Basins. This could only be done if Seattle agreed to allow Metro to construct new separate storm sewer systems and to discharge this stormwater through newly constructed stormwater outfalls. The City of Seattle recognized that new and potentially costly regulatory requirements for discharges from municipal separate storm sewer systems would soon be issued by Ecology. Seattle had an obligation to its drainage rate payers not to incur these additional programmatic costs by creating new stormwater drainage areas. The problem, therefore, was how could Metro meet its regulatory obligations for CSO control without adding to the Seattle's regulatory obligations under the imminent NPDES municipal stormwater permit?

The solution was for Seattle to allow Metro to separate both Densmore and Lander Basins *provided* that Metro then assumed "full responsibility for compliance with any existing or future regulatory requirements...." In short, the Densmore and Lander Basins would not be an issue of discussion today under the municipal stormwater permit if Seattle had not agreed to allow Metro to complete its separation project. They would still be combined sewer basins and more of a regulatory concern for King County than Seattle. Seattle agreed, however, to the separation project provided that Metro meet the new regulatory obligations and not transfer those obligations to Seattle. That was the basis for the mutual understanding then and, to our knowledge, remains the basis for the agreement to this day.

Recommendation.

Seattle recommends that Ecology retain the existing 1995 permit conditions wherein King County is a Co-permittee with the City and retains responsibility for complying with the applicable permit requirement for both the Densmore and Lander drainage basins and for the discharges from those outfalls. Under the terms of the existing MOA, Seattle and King County are due to review together the terms of the MOA and develop one or more joint programs as needed to comply with the terms of the NPDES permit. Both Seattle and King County will keep Ecology informed of the outcome of these discussions and with notify Ecology of any changes to the existing agreement or if any new agreements are made. This review and any subsequent agreements between the City and the County, however, should be conducted independent of Ecology's permit condition for King County as a co-permittee.